IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

Crl.MC.No. 671 of 2007()

CC.309/1999 of JUDL. MAGISTRATE OF FIRST CLASS, VAIKOM

.....

PETITIONER:

AJI KUMAR, S/O. NALAN,
SAJI BHAVANAM, KUDAVECHOOR, VAIKOM.

BY ADV. SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN

RESPONDENTS:

---

1. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. V.K.SATHYAN, S/O. KUNJUMON,
VALAPARAMBIL, KUDAVECHOOR, REP. BY ITS
P.A.HOLDER, SAJI K.B., S/O. BHASKARAN,
KIZHAKKEVALAPARAMBU, KUDAVECHOOR, VAIKOM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.671 of 2007

Dated this the 13th day of March, 2007

ORDER

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I Act. He has ultimately been sentenced to undergo imprisonment till rising of court and to pay an amount of Rs.60,000/- as compensation to the complainant and in default to undergo Simple Imprisonment for a period of 3 months. The petitioner is employed abroad. He could not come before this Court to undergo the substantive sentence of imprisonment till rising of court. He therefore applied before the same learned Judge who passed the order for extension of time. Extension of time was granted till 24th September, 2005. In that order, it was reported and accepted by the learned Judge that the amount has been paid to the complainant.

2. The petitioner could not get leave and could not appear before the learned Magistrate all along. He is now coming to India. He apprehends that when he comes to India notwithstanding the fact that the amount has been paid to the complainant and the complainant had accepted and endorsed the same, he may be compelled to undergo the default sentence. The petitioner is willing to appear and undergo the sentence of imprisonment till rising of

Court. But he apprehends that he may be sent to prison to undergo the default sentence notwithstanding the fact that the amount has been paid to the complainant. This he apprehends because in a later portion of Annexure-1 order it is stated that the amount must be deposited.

3. The relevant observations appear in para.4 and 5 of Annexure-1 which I extract below:

> "4. .....
> .....
> However, the petitioner shall pay a sum of Rs.60,000/- as compensation to the complainant and in default, he shall undergo simple imprisonment for three months.
>
> 5. The petitioner shall appear before the trial court on July 20, 2005 and deposit the amount of Rs.60,000/- on that day. On appearance of the petitioner, the learned Magistrate shall ensure that the petitioner undergoes imprisonment till rising of the court on that day. The amount of compensation deposited by the petitioner shall be disbursed to the complainant. If the petitioner fails to appear and make the deposit as directed above, the learned Magistrate shall execute the sentence forthwith."
>
> (emphasis supplied)

4. In the circumstances of the case, I am satisfied that the petitioner cannot be found fault with for having paid the amount directly to the complainant. If such payment has been made, there can be no question of the petitioner being compelled to undergo any default sentence. In Annexure-2 order of this Court, the learned Judge who passed Annexure-1 order in revision has also made observations as shown below indicating unmistakably that the course

adopted by the petitioner of making payment directly to the complainant was not improper.

> "It is submitted by learned counsel for the petitioner that the petitioner has already paid the amount of compensation to the complainant directly in Dubai. But the difficulty now faced by the petitioner is that he is not in a position to get leave to come down to this country and undergo imprisonment till rising of the court as directed in the order. In the peculiar facts and circumstances, the time for appearance of the petitioner before the trial court to undergo imprisonment is enlarged till September 24, 2005."

5. The petitioner can now appear before the learned Magistrate along with the complainant and file a joint statement to satisfy the learned Magistrate that the amount due to the complainant has been paid. If the learned Magistrate is satisfied about such payment, the petitioner need undergo only imprisonment till rising of court. The petitioner shall appear before the learned Magistrate on 20.03.2007. Till then, he shall not be arrested in execution of any processes issued by the court. If he does not appear, needless to say, he can be arrested later. This petition is thus allowed in part with the above directions.

6. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-